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Our Ref.: 4380-123
Your Ref.: 09/633,621 Date: January 26, 2005
To: Commissioner for Patents c/o Examiner Alton PRYOR
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From: Willem F. Gadiano

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ATTACHMENT/S:

1. Transmittal of Appeal Brief with request for 4-Month Extension of Time (2 pages);
2. Appeal Brief (6 pages); and
3. Amendment after Final Rejection (4 pages).

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Date:

By:

Wileen F. Gadiano, Registration No. 67,136

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

Steven M. Bessette

Atty. Ref.: 4380-123; Confirmation No. 3834

Appl. No. 09/633,621

Group: 1616

Filed: August 7, 2000

Examiner: PRYOR, Alton Nathaniel

For: PESTICIDAL COMPOSITIONS CONTAINING PLANT ESSENTIAL OILS AGAINST
BEETLES

* * * * *

TRANSMITTAL OF APPEAL BRIEFHonorable Commissioner for Patents
Mail Stop Appeal Brief-Patents

Sir:

Submitted herewith is Appellant(s) Appeal Brief in support of the Notice of Appeal filed July 26, 2004 and an Amendment After Final Rejection. Please grant a four (4) month extension of time for entry of same. Please charge the Appeal Brief and Extension of Time fees (small entity) to Deposit Account 14-1140.

To the extent necessary, please grant any further extension of time under 37 C.F.R. 1.136 deemed necessary. The Commissioner is hereby authorized to charge any deficiency

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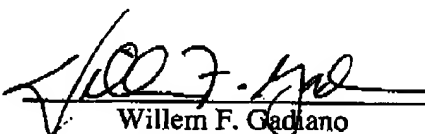
Atty. Docket No. 4380-123

in the small-entity fee(s) filed, or asserted to be filed, or which should have been filed
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Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



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Date:

January 26, 2005

By:



Willem F. Gadiano, Registration No. 37,136

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* * * * *

APPEAL BRIEFHonorable Commissioner for Patents
Mail Stop Appeal Brief-Patents

Sir:

Appellant herein appeals from the Examiner's final rejection of the pending claims. Appeal is timely and proper pursuant to 37 CFR § 1.191(a). This Appeal Brief is submitted in support of the Notice of Appeal filed July 26, 2004. Appellant has concurrently filed an Amendment After Final Rejection in an effort to eliminate the issues on Appeal and advance prosecution.

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REAL PARTY IN INTEREST

This application is assigned to EcoSmart Technologies, Inc., by assignment recorded on January 11, 2001, at Reel 011422, Frame 0488.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claim 25 is pending herein. Claim 9 has been cancelled. No claims have been indicated as being allowable. A copy of claim 25 (as amended) is found in the APPENDIX A attached hereto.

STATUS OF AMENDMENTS

All amendments filed in this case before January 26, 2005, have been entered. An amendment is being concurrently filed with this Appeal Brief to cancel claim 9 and amend claim 25 to overcome grounds of rejection under 35 U.S.C. § 102(b), as set forth in paragraph 1 in the Office Action (Paper No. 20) from which this appeal was taken.

SUMMARY OF INVENTION

The presently claimed invention is directed to methods for controlling beetles or weevils, the method comprising, applying to a locus where control is desired a pesticidally-effective

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amount of a composition comprising a carrier and a pesticidally-active agent consisting essentially of benzyl alcohol.

ISSUES

1. Claims 9 and 25 stand rejected under 35 U.S.C. § 102(b), as being unpatentable over Grier et al.

GROUPING OF CLAIMS

Under 35 U.S.C. § 282, Appellant submits that the patentability of any one appealed claim is not solely predicated on the patentability of the remaining appealed claim(s). Each claim of this patent application is separately patentable and upon issuance of a patent will be entitled to a separate presumption of validity. Pursuant to 37 C.F.R. § 1.192(5), each pending claim(s) will separately stand or fall in this appeal.

THE ARGUMENT

Claim 25 on appeal has been rejected under 35 U.S.C. § 102(b). Appellant's arguments are set forth below.

The Examiner maintained his rejection of claims 9 and 25 under 35 U.S.C. §102(b) as allegedly being anticipated by Grier (U.S. Patent No. 3,678,168). In particular, the Examiner asserted in the final Office Action dated January 26, 2004:

"Applicant argues that Grier teaches that benzyl alcohol is being used as a solvent for the active compounds: nitroalkyl- piperazines, rather than as active ingredient. Examiner would like to point out that the instant method controls beetles and weevils by applying a composition

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to a locus where control is desired a composition comprising a carrier and an essential oil such as benzyl alcohol. Examiner argues that Grier's invention also claims a method for the control of beetles and weevils. Because the instant method's composition is open (comprises / comprising), it allows for the inclusion of other actives such as nitroalkyl-piperazines. Also, it is important to note that Grier teaches the inclusion of addition ingredients such as powder diluents which function as carriers. See column 11 lines 41-45. It can be deduced that Grier's method discloses a composition for the control of beetles and weevils comprising benzyl alcohol, nitroalkyl-piperazines, and powder diluents. Therefore, [i]t can be further deduced that Grier's method reads on instant method."

On the contrary, Appellant submits that Grier merely teaches nitroalkyl-piperazines as being the active agents in the disclosed insecticidal compositions. Grier merely teaches that benzyl alcohol may be used as a solvent for insecticidal compositions containing the disclosed nitroalkyl-piperazines. Grier does not disclose an active agent consisting essentially of benzyl alcohol, as required by the presently claimed invention. For the foregoing reasons, Appellant respectfully requests that the Board reverse this rejection.

CONCLUSION

In view of the foregoing arguments, Appellant submits that there exists no factual basis to support a conclusion that the present claimed subject matter fails to satisfy the requirements of 35 U.S.C. § 102(b) in view Grier et al. It is respectfully submitted that the rejection of the claims on appeal is in error and should be reversed.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. The Commissioner is hereby authorized to charge any deficiency in the small-entity fee(s).

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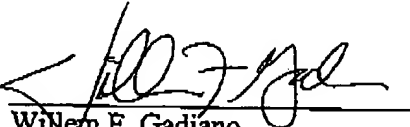
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Respectfully submitted,

NIXON & VANDERHYE P.C.

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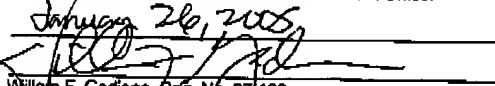
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APPENDIX A

25. A method for controlling beetles or weevils, the method comprising, applying to a locus where control is desired a pesticidally-effective amount of a composition comprising a carrier and a pesticidally-active agent consisting essentially of benzyl alcohol.